

# The Proposed BNSF Settlement Agreement: Background & WIEB Comments



Jim Williams, staff, WIEB, High-Level  
Radioactive Waste Committee

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# Outline: Proposed BNSF Settlement Agreement & WIEB Comments

1. Background
2. National interest in dedicated trains
  - Explicitly stated by NAS in 2006
  - Advantages expressed by NAS
3. WIEB concerns & comments (4)
  - Section of settlement agreement
  - Basis for WIEB comment
  - Joint Reply from BNSF / DOE / DOD
4. Overarching points in Joint Reply & WIEB's Response to Joint Reply
5. Status



# The Proposed BNSF Settlement Agreement: Background

**1983:** DOE/DOD sue 21 major railroads (see, *Union Pacific, Balt & Ohio; Aberdeen & Rockfish*)

Re: the common carrier obligation to carry SNF/HLW in dedicated trains (DT).

**2005:** DOE/DOE-Union Pacific (UP) Settlement Agreement:  
Railroads have a common carrier obligation;  
DOT-STB has jurisdiction over “unreasonable practices.”

**2005+: Very limited experience under the UP agreement.**  
(Only occasional Navy SNF to INL)

**Sept. 2012:** Proposed BNSF-DOE/DOD Settlement Agreement.  
(Based on UP.)

**Soon:** Norfolk-Southern and other DOE/DOD settlements with carriers . (Based on UP & BNSF.)



# National Interest to Ship in Dedicated Trains

## 2006: The National Academies issue *“Going the Distance?”*

“There are clear **operational, safety, security, communications, planning, programmatic, and public preference** advantages that favor DTs.” (pg.18)

“DOE should fully implement its dedicated train decision before commencing large-quantity shipment of SNF and HLW. . .” (pg. 19)

Sept. 2012: Proposed DOE/DOE-BNSF Settlement Agreement (based on UP.)  
**But is there now a clearer national interest than in 1983 or 1985?**

Nov. 2012: **WIEB comments to DOT-STB:**

**Concern that the Settlement *could be* inconsistent with the national interest in full use of DTs for SNF/HLW shipment.**

**Soon:** Norfolk-Southern and other DOE/DOD settlements with carriers (based on UP & BNSF).



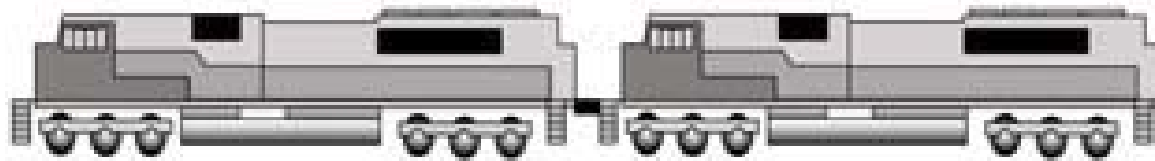
# National Interest to Ship in Dedicated Trains:

**The operational, safety, security, communications, planning, programmatic, and public preference advantages:**

- **Reduces # of shipments.** One (3-cask) dedicated train removes (18-21) heavy-haul GA 4/9 shipments from public highways.
- **Better, more efficient ER & security.** Escort cars on DTs are much more effective & efficient than alternatives.
- **Reduced radiation impacts.** DTs need not stop in urban rail yards, reducing “radioactive shine” impacts in corridor communities.
- **Logistics of SNF removal.** Combined with cask and equipment purchases, and adjustment of the Standard Contract “queue”, DTs can increase the efficiency of SNF removal from origin sites.
- **No impacts on regular freight/Better monitoring-tracking.** Advanced rail cars move at speeds consistent with other freight traffic (no disruption), include advanced monitoring/tracking equipment (better operations).
- **Address risk perception.** DTs are an essential component of a broader strategy to convince (skeptical) corridor communities that DOE will “do the job right.”

## Dedicated Train: Three Cask Cars

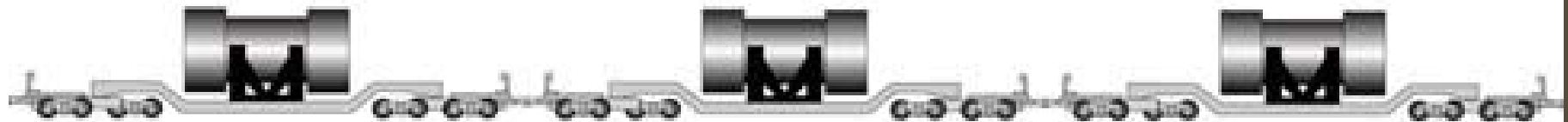
Locomotives



Ballasted Buffer Car



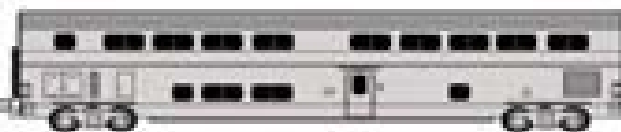
Cask cars including cask and cradle



Ballasted Buffer Car



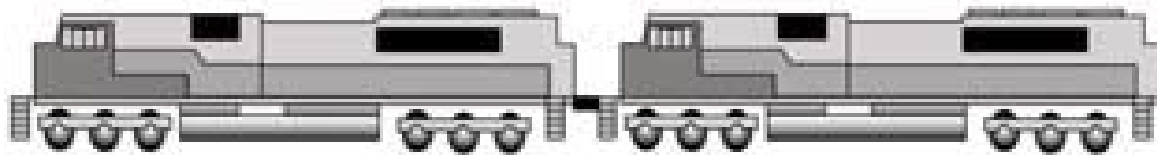
Escort Car



# Federal Government Capital Cost: **\$12.7 MM** (FY'13)

Excluding R&D and Operations; Legend: **Casks**; **Cars**

Locomotives



Ballasted Buffer Car



**\$5.1mm**

Cask cars including cask and cradle

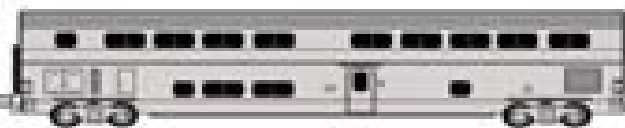
**\$5.1mm**



Ballasted Buffer Car



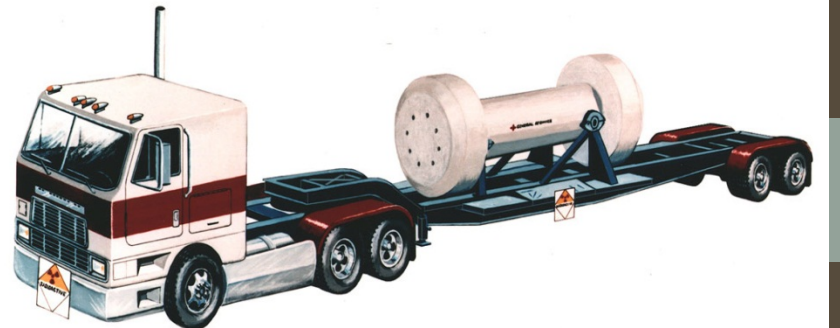
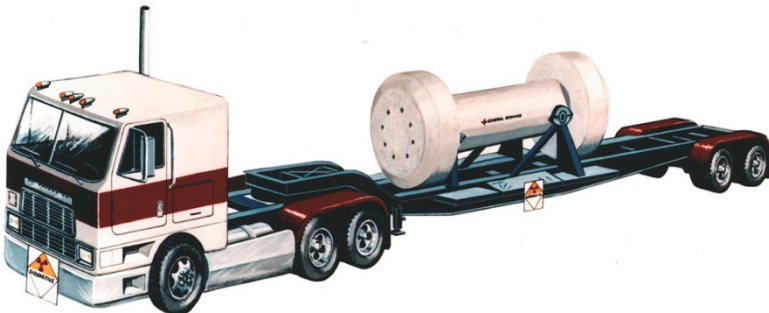
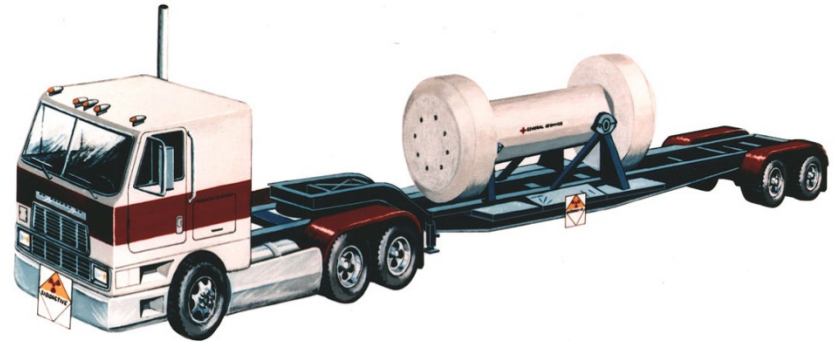
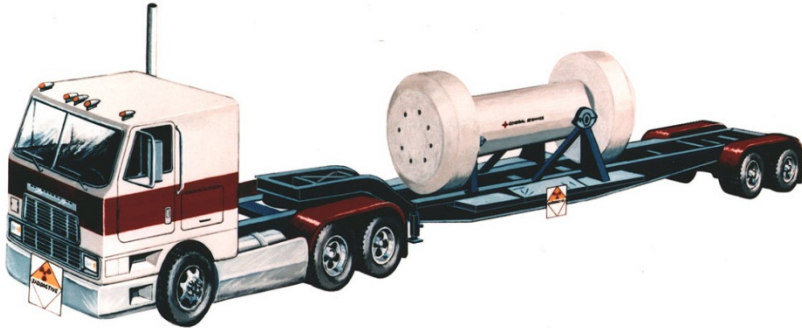
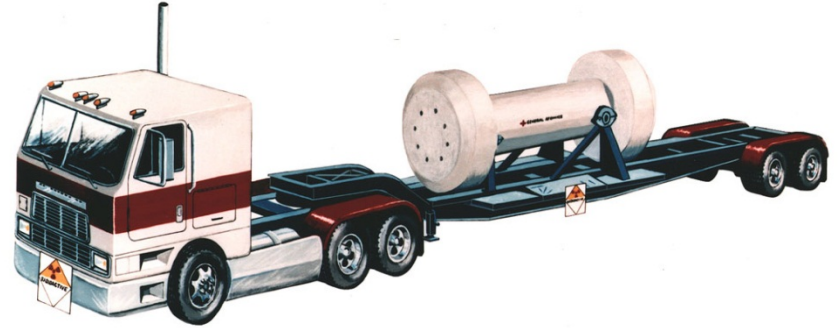
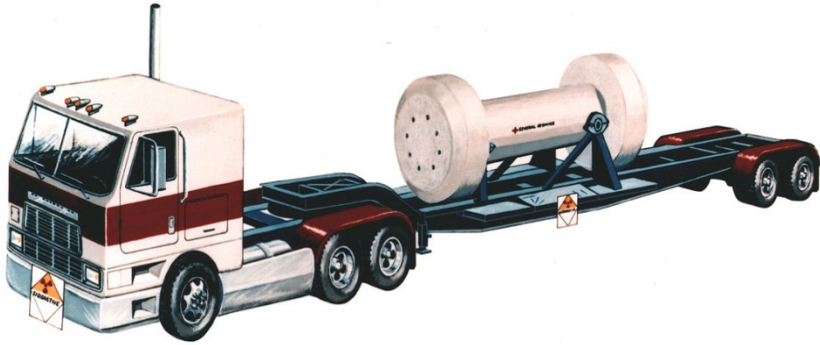
Escort Car



\$1.1mm

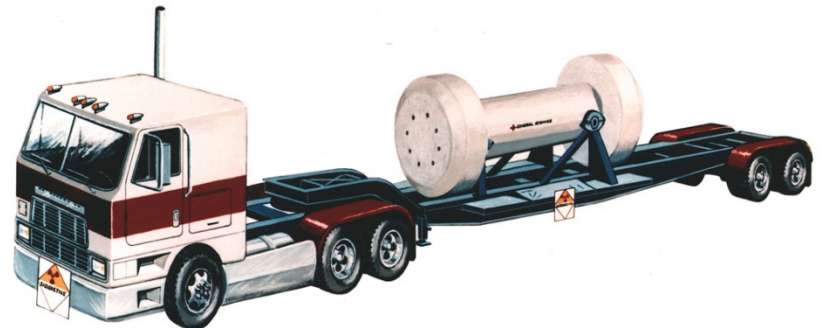
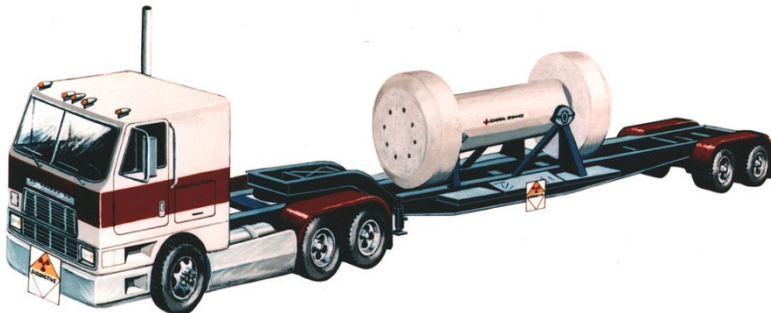
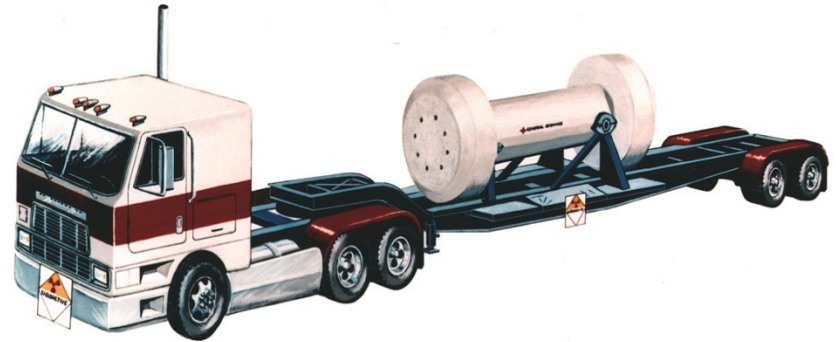
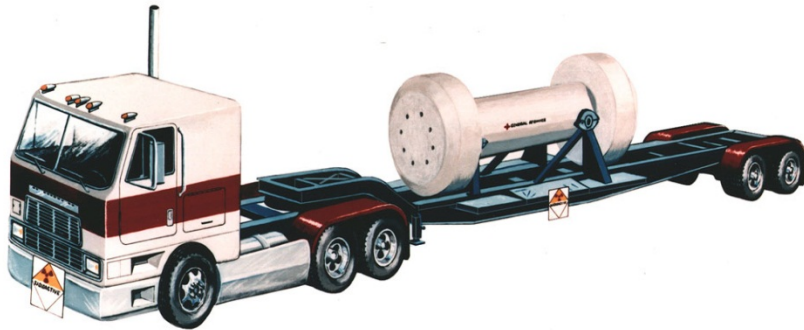
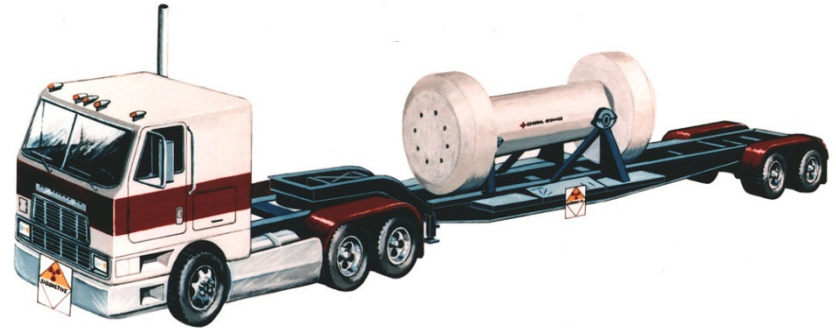
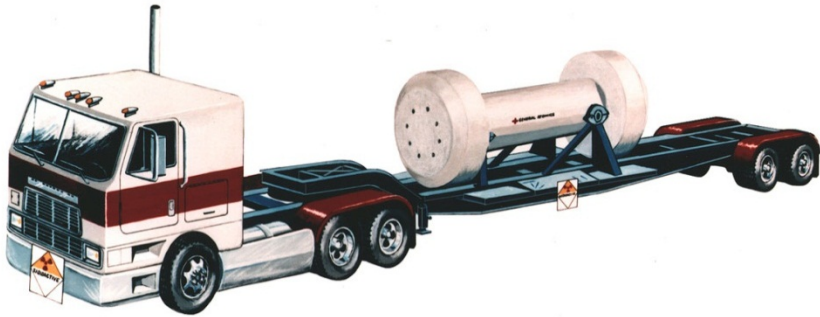
\$4.1mm

For any route segment, **1 DT** replaces **18-21 GA 4/9** overweight trucks.....Here are the first six.

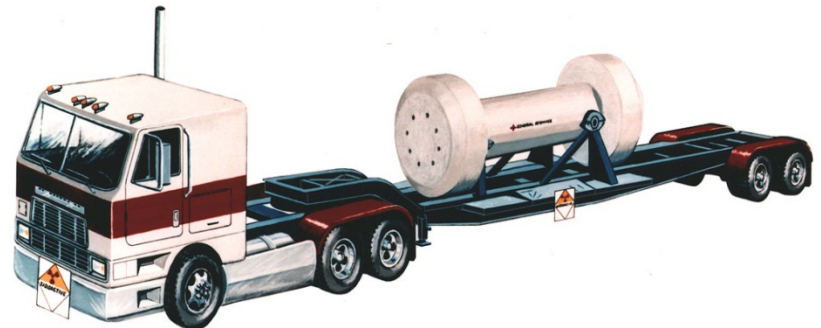
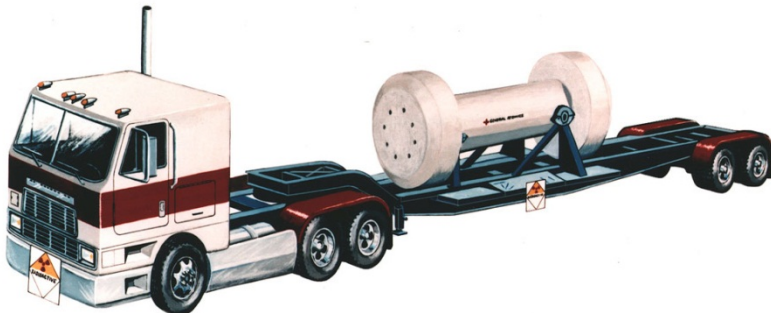
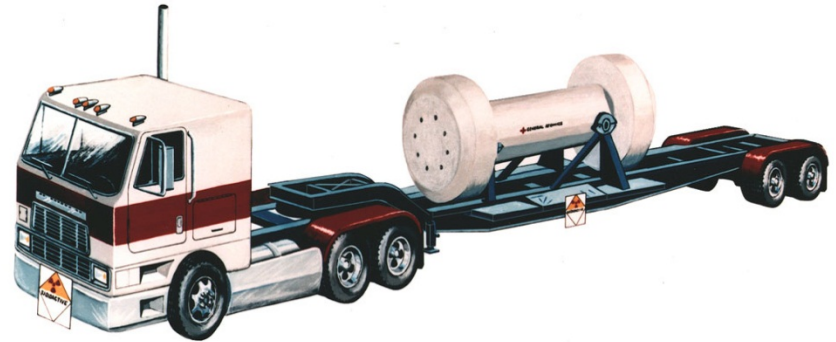
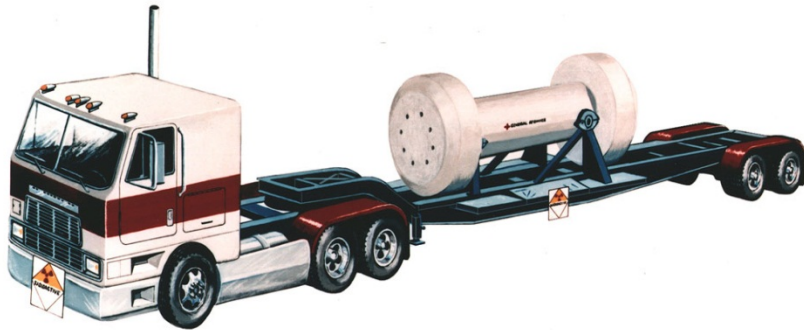
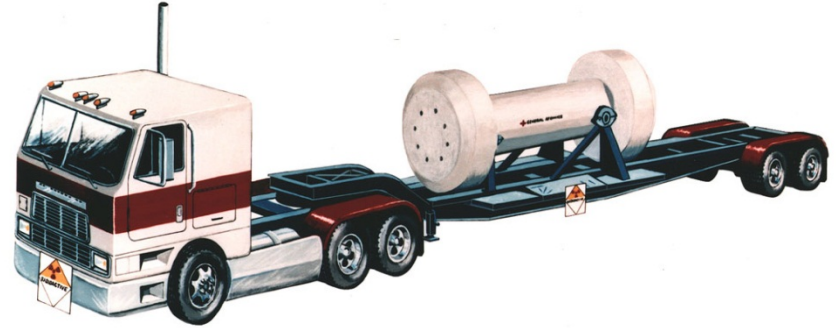
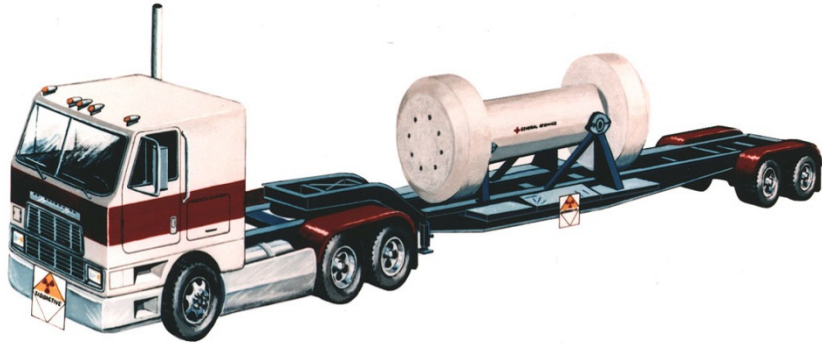




Here are the next six.....And remember that corridor state bridge formulas, travel restrictions (e.g. daytime only) & escort requirements may apply to overweight truck shipments.



Here GA-4 cask shipments #13-18 of 18 required to replace a single 3-cask Dedicated Train





# WIEB Concerns Regarding the Proposed Settlement

**Some provisions could be used to:**

- 1. Thwart provision of DT service as near as possible to origin sites.**
- 2. Deny or disrupt DT service, or to reroute DTs to reserve better track for regular freight.**
- 3. Prevent efficient deployment of gov-supplied equipment.**
- 4. Improperly charge for “Extra Services”, and thereby frustrate DT shipment.**

**A major rail company’s profit perspective:**

- In 2012, Class 1 railroads had operating revenue of \$70.1 B, and net income of \$12.0 B (17%).**
- SNF/HLW transport “business” would add only about 0.1%.**



## WIEB Concern

### 1. Thwart provision of DT service as near as possible to origin sites.

**Section 6D:** What happens if BNSF believes that that a proposed DT could damage BNSF track or facilities, or would incur additional operating costs?

**WIEB:** Railroads should fully cooperate in the make-up of DTs, if not at the origin site, then at the nearest feasible railhead.

**Reply:** The parties are confident that, if and when these instances arise, the parties will confer in good faith.





## WIEB Concern

### 2. Deny or disrupt DT service, or to reroute DTs to reserve better track for regular freight.

**Sections 4B & 4F:** BNSF will control selection of routes internal to its system . . . consistent with various procedures and practices.

**WIEB:** If DTs use state-of-art railcars (developed by the U.S. Government), why should BNSF limit speeds or routes *vis-à-vis* other freight traffic?

- The state-of-art railcars were developed to avoid such limitations.
- Also, if AAR PHMSA assigns part of a cross-country route to BNSF, does BNSF get to modify the route internally?

**Reply:** So long as BNSF complies with Key Trains requirements (OT-55-G) it is reasonable and customary for BNSF to choose the appropriate internal route or routes.



## WIEB Concern

### 3. Prevent efficient deployment of government-supplied equipment, both in delivery and return shipment.

**Section 4D:** To a shipment of empty casks, cask cars and buffer cars, BNSF may elect to add cars carrying dry freight (§ 12).

**WIEB:** May BNSF elect to do this if the shipment thereby involves extra stops, different routing &/or additional travel time, i.e., dramatically less reliable & efficient transportation logistics?

**Reply:** If the Government does not want return shipments to be mixed with regular freight, it must choose DT shipment (& costs).

Besides, escort and buffer cars would typically be available for return *long before* casks and cask cars . . . the turnaround time for escort cars and buffer cars is *much quicker* than for cask cars.



## WIEB concern

### 4. Improperly charge for “Extra Services”, and thereby frustrate DT shipment.

**Section 6B:** BNSF will not unreasonably withhold “Extra Services”, provided that: (a) the Government pays extra, and (b) the Extra Service would not disrupt normal operations (as assessed by BNSF).

**WIEB:** Does the Government pay for requested Extra Services even if the services provide capability useful in other BNSF shipments?

*How* would BNSF conclude that the Extra Service disrupts “normal operations”? E.g. How account for the weights of DTs? .....Extra Services should *enable* DT shipment, not be used to frustrate it.

**Reply:** BNSF will not unreasonably withhold Extra Services requested by the Government Shipper.



# *“Overarching points”* in Joint Reply & WIEB’s Response

## **BNSF-DOE/DOD Reply (Dec. 28, 2012)**

**1.** While WIEB may believe that SNF/HLW should always move in DT service, the Government has the discretion . . . to make that election on a case-by-case basis.

## **WIEB Response (Jan. 12, 2013)**

- a) It was the *National Academy of Sciences* (not just WIEB) that enumerated the advantages of DTs.
- b) The Government should be able to make the election in confidence that it will receive full cooperation from BNSF and other carriers.





# *“Overarching points”* in Joint Reply & WIEB’s Response

## **BNSF-DOE/DOD Reply (Dec. 28, 2012)**

2. The provisions cited by WIEB are not materially different from corresponding provisions in the 2005 UP-DOE/DOD Agreement; since WIEB’s concerns have not been at issue under the 2005 agreement, they should not be a concern now.

## **WIEB Response (Jan. 12, 2013)**

- a) The provisions of the UP-DOE/DOD agreement were not really tested in 2005-2012.....occasional Navy SNF shipments to INL, are not a test for large-scale SNF/HLW transport.
- b) Until they are tested, WIEB’s concerns are legitimate.



# *“Overarching points”* in Joint Reply & WIEB’s Response

## **BNSF-DOE/DOD Reply (Dec. 28, 2012)**

3. WIEB has not demonstrated that any provision in the Agreement traverses any law or regulatory policy . . . . Therefore, it is not necessary to consider changes or improvements, either in the Agreement terms or in their application-in-process.)

## **WIEB Response (Jan. 12, 2013)**

a) It is not our purpose to show where the Agreement may traverse a law or regulation.

b) Rather, our purpose was to express concerns about the potential application to frustrate fuller achievement of the national interest, as expressed by the NAS in 2006.



## Status:

### 3 Months After WIEB Response to Joint Reply

- **No response from STB, BNSF, DOE or DOD.**
- **On the agenda for NTSF in May (Session #3, on Thursday)**
  - Ray English (NNPP) responds, and adds his own views.
  - BNSF invited, declined: issue still at STB.
  - AAR (Bob Fronzak) invited, declined: not an AAR issue.
  - UP invited, declined: don't know the case.
  - DOE (Steve Skubel) invited, declined: just a lawyer; this is policy.
- **Norfolk Southern-DOE/DOD Agreement in the works.**  
(This and subsequent agreements based on UP & BNSF.)
- **“Full implementation” of NAS recommendations not assured.**  
“Best” DOE & NRC policy could be frustrated by carriers, working through DOT/FRA . . . unless DOE gets better support from Congress.
- **But, carriers and AAR have more clout in Congress than DOE.**



# Contact Information

- Jim Williams, Western Interstate Energy Board (WIEB), High-Level Radioactive Waste Committee, staff, [jwilliams@westgov.org](mailto:jwilliams@westgov.org), (303) 573-8910 ext. [??]
- WIEB HLRW Committee website:  
<http://www.westgov.org/wieb/site/hlwpagel/index.htm>
  - Meeting announcements
  - Reference material
  - And more